

**OPINION
72-114**

March 8, 1972 (OPINION)

Mr. Thomas E. Rutten
Assistant State's Attorney
Ramsey County

RE: Counties - Park Levy - Suspension of Township Levy

This is in response to your letter in which you state that you have been requested to ask for an opinion on the question whether or not a park levy made by a township located within a tri-county park district continues or is automatically suspended when the tri-county park district imposes a park levy.

Section 11-28-06 authorizes the county commissioners to levy a tax not to exceed one-half mill without approval of the voters of a county for park purposes. This section concludes with the following language:

"This levy shall not apply to cities or villages that already have a park levy unless the governing body of such city or village by resolution consents to such levy."

The foregoing provision is found in the statutes pertaining to county park districts. However, as to tri-county park districts or joint county park districts, the statutes require that the question whether or not the county commissioners shall be authorized to levy a tax of not to exceed a maximum of three mills must be submitted to the electorate of the counties involved. See Section 11-28-17. Even though the specific language contained in Section 11-28-06 is not repeated in Section 11-28-17 because of the nature of the governmental activity involved, we believe that the last sentence of Section 11-28-06 is applicable to instances where counties join together to jointly operate parks. For that matter, Section 11-28-22 which addresses itself to joint county park districts states that its provisions shall be liberally construed to accomplish its purposes.

As to townships, its authority to operate parks including a levy for such purposes, contains some qualifications and limitations. Section 58-17-02 provides that the levy shall not exceed two mills "but such levies shall not apply to property in any city or park district which levies for park district purposes." The term "park district" necessarily embraces and includes a county park district. The same sentence also provides that such levy shall not apply to a city which levies for park purposes. It is somewhat difficult to understand how a city within a township would come under a township levy unless such city were not incorporated which is hard to visualize, particularly in view of the meaning of the term "city". The term "park district", however, has a clear application and meaning.

It is therefore our opinion that a park levy made by a township under the provisions of Section 58-17-02 is automatically suspended when the joint county park district levies taxes for park purposes where such township is within the geographic boundaries of the joint county

park district.

HELGI JOHANNESON

Attorney General